

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 4TH DECEMBER 2006/13TH AGRAHAYAHA, 1928

Bail Appl..No. 6880 of 2006()

CRIME NO. 433/06 OF ERNAKULAM TOWN SOUTH POLICE STATION
CMP.1860/2006 of J.M.F.C.-II, HARIPAD
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PETITIONER/3RD ACCUSED

AJIKUMAR @ AJI,
S/O.PRABHAKARAN, CHAPRAYIL VEEDU,
KEERIKKAD VILLAGE, KARTHIKAPALLY TALUK.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA, (EXCISE INSPECTOR,
KAYAMKULAM RANGE), REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD
ON 1/12/2006, THE COURT ON 4/12/2006 PASSED THE
FOLLOWING:

V. RAMKUMAR, J.

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DATED: 4-12-2006

ORDER

The petitioner who is the 3rd accused in C.R. No. 85/2006 of Kayamkulam Excise Range for an offence punishable under Sec. 55 (a) of the Abkari Act , seeks bail. The petitioner was arrested on 9-8-2006.

2. Sr. Advocate Sri. M.K. Damodaran, appearing for the petitioner made the following submissions:-

Accused Nos. 1 and 2 alone were arrested from the spot and that the petitioner was only implicated and arrested subsequently without anybody identifying the petitioner from the spot. The petitioner had earlier filed an application for bail as B.A. 6154/06. As on 9-10-2006 he had completed 60 days of detention but the charge sheet in the case had not been filed. It was filed only on 4-11-2006. The petitioner had therefore acquired the indefeasible right to bail by virtue of the proviso to Sec. 167 (1) Cr.P.C. ***Uday Mohanlal Acharya v. State of Maharashtra - Vide 2001 (5) SCC 453 (Para 14).*** But B.A. 6154/05 was dismissed on 25-10-2006 by this Court without giving the petitioner the benefit of the proviso to Sec. 167 Cr.P.C.

Since, after the amendment of Sec. 50 of the Abkari Act Excise Inspectors also have to file a charge sheet under Sec. 173 (2) Cr.P.C., in the light of the decisions reported in ***Bdaku Joti Svant v. State of Mysore - AIR 1966 SC 1746 and Din Dayal v. The State of Delhi (Admn.) - AIR 1991 SC 45*** they are also police officers within the meaning of Secs. 25 and 26 of the Evidence Act and therefore any confession recorded by Excise Officers will be hit by Secs. 25 and 26 of the Evidence Act.

3. The learned Public Prosecutor opposed the application and made available to me the investigation files.

4. I am afraid that I find myself unable to agree with the above submissions made on behalf of the petitioner. The petitioner is sought to be roped in not merely from the confessional statements given by A1 and A2. On 16-7-2006 at 10 a.m. an excise party headed by the Excise Inspector, Kayamkulam came across 10,265 liters of spirit in 294 white plastic cans each having 35 liter capacity in building No. PPXV/567 in Keerikadu Village belonging to A1. Altogether 3 persons were found in house. The excise party was able to apprehend two out of them from the spot itself and they were arrayed as A1 and A2. The 3rd person who successfully made good his escape is the petitioner. The detecting excise party was able to

identify the petitioner although they could not apprehend him. Hence, even if the statements given by A1 and A2 to the Excise Inspector are hit by Sec. 25 of the Evidence Act, there is material to show that the detecting excise party had identified the petitioner abandoning the contraband spirit and making good his escape.

5. Equally misconceived is the argument based on Sec. 167 Cr.P.C.. No doubt, the petitioner could have pressed for the benefit under the proviso to Sec. 167 at a time when B.A. 6154/06 was taken up for consideration. Having not done so and having suffered an adverse order of dismissal of his bail application the petitioner cannot rake up the alleged illegality in the order passed by this Court in a subsequent bail application. The charge-sheet has admittedly been filed on 4-11-2006. A reading of the decision reported in ***Uday Mohanlal Acharya v. State of Maharashtra - 2001 (5) SCC 453*** relied on by the petitioner himself will show that the petitioner in that case was challenging the dismissal of his bail application without giving him the benefit under Sec 167 Cr.P.C. That is not the position here.

6. It is too early to conclude that the petitioner has nothing to do with the large quantity of contraband spirit seized from the house from where the petitioner had made good his escape on seeing

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the approaching excise party I am not satisfied that both the grounds enumerated under Sec. 41 A (b) (ii) of the Abkari Act are present in this case so as to justify the release of the petitioner on bail.

This bail application is, accordingly, dismissed.

**V. RAMKUMAR,
JUDGE.**

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